

A guide to mental capacity in Scotland

Mental health and wellbeing in later life



Who we are

Age Scotland is the national charity for older people. We work to improve the lives of everyone over the age of 50 so that they can love later life.

Our vision is a Scotland which is the best place in the world to grow older.

Our mission is to inspire, involve and empower older people in Scotland, and influence others, so that people can make the most of later life.

Our three strategic aims are to:



Help older people to be as well as they can be



Promote a positive view of ageing and later life



Tackle loneliness and isolation

How we can help

We know that growing older doesn't come with a manual. Later life can bring changes and opportunities to your life and you may need to know about rights, organisations and services which are unfamiliar to you.

That's why we provide free information and advice to help you on a range of topics including benefits and entitlements, social care, legal issues such as Power of Attorney, housing and much more. All of our guides are available to download for free from our website, or you can contact our helpline team to have copies posted to you for free.

The Age Scotland **helpline** is a free, confidential phone service for older people, their carers and families in Scotland looking for information and advice.

Later life can bring times when you just need someone to talk to. Our **friendship line** is part of our wider helpline and older people can call us for a chat. We're here to listen, provide friendship and offer support.

For information, advice and friendship



Call us free on: 0800 12 44 222
(Monday – Friday, 9am - 5pm)



Visit [agescotland.org.uk](https://www.agescotland.org.uk)
to find out more.



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Introduction

Everyone who is over 16 years old in Scotland is presumed to have mental capacity to make decisions for themselves. This only changes if a legal decision is made that they do not.

If someone does not have, or loses mental capacity, there are laws in place to protect them, and to guide the people who provide care or support for them.

This guide looks at what mental capacity means in Scotland, how the law works in practice and where to get advice.





What is mental capacity?

Mental capacity refers to the ability to make and understand decisions, communicate them, act on them and remember them.

Some people may have had limited capacity all their lives. Others may have a reduced capacity caused by a progressive illness such as dementia, or may lose capacity suddenly, after a major life event such as a stroke or an accident.

Mental capacity can vary throughout the day, from day to day or over a longer period of time. It may not affect every kind of decision. For example:

- someone may struggle to make decisions in the morning, but can make informed choices more easily in the afternoon
- someone may not have the capacity to make complex decisions about their finances or welfare, but they may know exactly what they want to eat and wear and who they want to spend time with.

Your next-of-kin, family member, carer or other person close to you does not have the legal right to make decisions for you if you lose the ability to do so yourself. There are a number of ways someone can legally act on your behalf such as Power of Attorney, Guardianship and becoming an Appointee for benefit purposes.

For more information, see our **Legal options for someone who has lost capacity** guide.





Common problems

Difficulty making decisions, or acting on decisions can lead to many practical problems, for example:

- **Difficulty getting to the shops or to socialise.** This can lead to having a poorer diet, taking less exercise, smoking, drinking too much alcohol, isolation and loneliness.
- **Problems communicating with healthcare staff.** GPs, dentists or other healthcare staff may not understand someone's needs if they have not met before or if it has been a long time since the last appointment. It may be hard to describe symptoms or feelings, which can cause confusion or errors of judgement by healthcare staff.

All healthcare professionals are trained to be aware of issues with mental capacity, so they should use their skills and take time to communicate clearly when speaking with the patient.

If there are problems with NHS services, you can contact the **Patient Advice and Support Service** through your local Citizens Advice Bureau. See their website www.cas.org.uk/pass or call them on **0800 917 2127**.

- **Raising concerns about care services.** This can be challenging if someone finds it hard to speak for themselves, whether they are living in their own home or in a care home. If there are problems with care such as carers not turning up, poor care or inadequate communication it can be difficult to make a complaint.
- **The risk of trusting the wrong people.** Doorstep sellers, scammers operating in person, or by phone, internet, mail or text message, or companies that influence someone to buy products or services they do not need or cannot afford can be a risk to someone who has lost capacity. If you think you, or someone you know, has been the victim of a scam, contact **Consumer Advice Scotland** at www.consumeradvice.scot, or **0808 164 6000**.



What does the law say about mental capacity?

In Scotland, when somebody becomes incapable of managing their finances or making decisions about their welfare, the Adults with Incapacity (Scotland) Act 2000 provides protection for them. The Act was created to safeguard people who don't have the mental capacity, or the ability to communicate, along with those who want to help them.





The Act states that a person may lack mental capacity if they are unable to:

- act on decisions
- make decisions
- communicate decisions
- understand decisions
- remember decisions.

People should be supported to do these things wherever possible.

Someone may not have the capacity to carry out complex tasks or make decisions about their finances or welfare, but they may still have the capacity to make everyday decisions, and should be encouraged to continue to do so.

Other legislation that protects people with incapacity includes:

The Adult Support and Protection (Scotland) Act 2007

This was introduced to identify and protect people who are adults at risk of harm. This includes adults who are unable to safeguard their own wellbeing, property, rights or other interests, because they have a mental or physical disability, or condition, that make them more vulnerable to being harmed than they would otherwise be.

The Mental Health (Care and Treatment) (Scotland) Act 2003

This sets out how and when someone can be given treatment if they have a mental illness, a learning disability or a personality disorder. It was introduced to protect human rights and ensure that compulsory care and treatment are only used when there is a significant risk to the safety of the person, or to those around them.



How the law works in practice



Mental capacity is not straightforward as each individual is different. The right thing to do to support one person may not be the best way to help someone else.

The Adults with Incapacity (Scotland) Act 2000 has five principles, which are used by professionals such as doctors and social workers, people who have Power of Attorney and others, to help them make sure that all decisions made are in the person's best interests.

The principles are:



Any action taken must benefit the person and must be necessary.

This might seem obvious, but sometimes it can be difficult to know whether making a particular decision will benefit someone or not. It is important to consider the reasons for any changes, whether they are needed to keep someone safe and well, and what the advantages would be.

Sheena has been helping her uncle Robert out for a while with his money. He finds it hard to get to the bank to pay his bills so she goes with him and sometimes takes money out of the bank for him. Robert is also starting to find it difficult to budget. Sheena is worried that if she is ever unable to help him, he will go without money to buy food and essentials.



If Robert has mental capacity, he could set up direct debits or standing orders himself so he doesn't have to go to the bank to pay his bills. If he needs help with his finances he could grant Power of Attorney to someone he trusts, perhaps Sheena if she is usually the person who helps him. If his attorney moves some of his money into a savings account, while leaving money available to pay for his food and essentials, this could be beneficial to Robert as he would receive interest on the savings.



The wishes of the person must be taken into account.

The person should always be encouraged to express what they think and to take part in discussions about their life. Their past wishes and way of life must be considered too. Did they always have a very relaxed approach to life or did they like things done in a certain way? What is important to them?

Everyone has their own preferences about how they want to live.

This could include their choices about:

- clothing
- food
- religious beliefs
- personal appearance
- spending time with other people, or spending time alone



The option taken should always be the least restrictive one which has the desired effect.

Any decision should aim to preserve the person's freedom and independence as far as possible. Changes to someone's environment or routine can have a negative impact on their quality of life.



Sarah is worried about her mother who is 83 and lives alone in Glasgow. She was always very house proud, took care with her appearance and could regularly be seen walking her dog around the neighbourhood. Nowadays she is wearing the same unclean dress for many days and her dog is always whining to get out.

Sarah wants to look into care home places near where she lives in the Highlands and has contacted NHS Highland.

NHS Highland suggests that Sarah should contact Glasgow social work department and ask for an assessment of her mother's care needs so she could be supported to live in her own home instead of moving away from her community.

If her mother still has the ability to make decisions for herself Glasgow council will need her consent to assess her care needs.



Other relevant people must be consulted before a decision is made.

The person's carer and nearest relative must be consulted about decisions if this is practical.



The person must be encouraged to use their own skills and develop new skills where possible.

When the person finds it difficult to communicate or understand something, they should be supported to use their abilities as much as possible. If speaking is difficult, drawing or learning to use a computer may help. Tasks shouldn't be done for someone who is willing and able to carry out the task for themselves, as this could lead to them losing skills.



Are you worried about someone?



How can you help?

If you are worried about someone's mental capacity, the best place to start is talking to them. You could ask them how they are and if there is anything they want to talk to you about.

David is concerned for his 83 year old neighbour, as every day when they chat at the garden fence the neighbour appears to have no memory of the conversation they had the day before.

There are a number of ways you could help:

- If you are not close to the person yourself, speak to someone who is, such as their family, friends or carer. You may alert them to issues they have not noticed, or you may find that they are already taking steps to help.
- Get in touch with the person's local social work department and explain your concerns.
- Phone their GP. The GP will not be able to tell you anything about their patient, but they can listen and act if needed.
- If you think the person may be at risk of harm or neglect, contact their local social work department. Contact the police if you feel they are in immediate danger.



Communication

If someone has the capacity to make their own decisions, but has difficulty communicating, you can try to help with communication.

Communication support can come in many forms, for example helping someone to understand written or verbal information, or to express their needs and opinions, being there to reassure someone who is anxious or supporting someone who has difficulty interacting appropriately.

Some specialist charities provide information about communication support, online or by telephone.

Alzheimer Scotland have tips for communicating with someone with dementia at www.alzscot.org/our-work/dementia-support/information-sheets/communicating-with-someone-who-has-dementia-12-helpful-hints, or call their helpline on **0808 808 3000**.

Chest Heart & Stroke Scotland have information about communication support after a stroke, at www.chss.org.uk/stroke-information-support/your-stroke-toolkit, or call their advice line on **0808 801 0899**.

The **Scottish Government** have in-depth information about Assisted Communication Support for people with with sight loss, deafness, and dual sensory loss, at www.gov.scot/policies/social-care/assisted-communications.

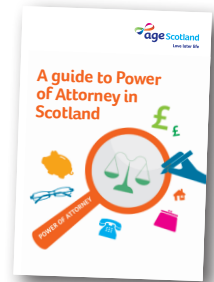


Ways to receive or provide support

Power of Attorney

You can grant Power of Attorney if you have mental capacity. It gives someone else the authority to make specific decisions about your life, if you need help, or lose the ability to make decisions for yourself.

See our **Guide to Power of Attorney in Scotland** for more information.



Informal arrangements

If you want help to manage your money on a less permanent or formal basis, there are some options you could consider.

A joint bank account, or Third Party Mandate, that lets someone else deal with certain aspects of your banking, can be useful in some situations.

For more information and other suggestions, see our **Help to manage your money and benefits** guide.



Access to Funds, Guardianship and Intervention Orders

If you lose capacity and have not set up a Power of Attorney, legal arrangements have to be made to allow someone else to make decisions on your behalf. These include the Access to Funds scheme, Guardianship Orders and Intervention Orders.

See Age Scotland's factsheet **Legal options for someone who has lost capacity** for more details about these options.





Useful contacts

Age Scotland helpline: 0800 12 44 222

The Age Scotland helpline provides information, friendship and advice to older people, their relatives and carers.

If you need an interpreter call **0800 12 44 222** and simply state the language you need e.g. Polish or Urdu. Stay on the line for a few minutes and the Age Scotland helpline will do the rest.

You can call us for a copy of our publications list or download copies from our website at **www.agescotland.org.uk**.

The Office of the Public Guardian in Scotland

The Office of the Public Guardian in Scotland can provide information about legal issues such as Power of Attorney and Guardianship.

Tel: **01324 678 300**

www.publicguardian-scotland.gov.uk



Mental Welfare Commission for Scotland

The Commission protects and promotes the human rights of people with mental health problems, learning disabilities, dementia and related conditions.

They operate a phone line for advice about practice under the Mental Health and Incapacity Acts.

Freephone: **0800 389 6809**

www.mwscot.org.uk

Patient Advice and Support Service (PASS)

The Patient Advice and Support Service service is delivered through your local Citizens Advice Bureau. It is independent and provides free, confidential information, advice and support to anyone who uses the NHS in Scotland.

Tel **0800 917 2127**

www.cas.org.uk/pass

This information guide has been prepared by Age Scotland and contains general advice only, it should not be relied on as a basis for any decision or action and cannot be used as a substitute for professional or medical advice.

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Please note that the inclusion of named agencies, websites, companies, products, services or publications in this information guide does not constitute a recommendation or endorsement by Age Scotland or any of its subsidiary companies or charities.

Thanks to the Office of the Public Guardian (Scotland) and the Mental Welfare Commission for Scotland who were involved in the writing of this guide.

How you can help

Our vision is a Scotland which is the best place in the world to grow older.

All the information and advice we provide is free and completely impartial and in helping people access their rights and entitlements, it can be life changing.

We are an ageing population and more people than ever are coming to us for support. You can help us be there for those that need us most.



Make a donation

No matter how small or large, donations make a massive difference and help us continue our important work.

- ▶ Call **03330 15 14 60**
- ▶ Visit **age.scot/donate**
- ▶ Text **LATERLIFE** to **70085** to donate £5.*



Fundraise

Whether it is having a bake sale, running a marathon or knitting small hats for the Big Knit, there are so many ways to raise vital funds to support our work. To find out more, call **0333 323 2400** or visit **age.scot/fundraise**.



Leave us a gift in your Will

By choosing to leave us a gift in your Will, you can help Age Scotland to continue being there for vulnerable older people in the years to come. To find out more, call **0333 323 2400** or visit **age.scot/legacy**.

* Texts cost £5 plus one standard rate message

Let's keep in touch



Sign up to our newsletter

Our regular newsletters by email contain details of our campaigns, services and how you can support our work.

Sign up today by visiting **age.scot/roundup**



Follow us on social media

Our social media channels are a great way to keep up to date with our work and issues that affect older people.



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[/AgeScotland](https://www.linkedin.com/company/AgeScotland)

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